

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 AF-10 ARA-10 EA-10
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AID-05 CEA-01 CIAE-00 COME-00 EB-08 FRB-03 INR-10
NSAE-00 OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01
AGRE-00 OMB-01 SS-15 /122 R

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FM SECSTATE WASHDC

TO AMEMBASSY BONN IMMEDIATE

AMEMBASSY LONDON IMMEDIATE

AMEMBASSY PARIS IMMEDIATE

INFO ALL OECD CAPITALS

USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 075523

PARIS FOR USOECD, BRUSSELS FOR USEEC

E.O. 11652: GDS

TAGS: EGEN, EINV, ECOSOC, UN

SUBJECT: ECOSOC WORKING GROUP ON ILLICIT PAYMENTS

REFS: (A) USUN 866; (B) PARIS 832 (NOTAL); (C) PARIS

3089 (NOTAL); (D) PARIS 9234 (NOTAL); (E) PARIS 9454;

(F) STATE 67686

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1. EC AND OTHER OECD COUNTRIES ARE NOW REVIEWING
POSITIONS ON THE PROPOSED INTERNATIONAL AGREEMENT ON
ILLICIT PAYMENTS IN PREPARATION FOR THE CRUCIAL MEETING
OF THE ECOSOC WORKING GROUP IN NEW YORK APRIL 3-14. THE
U.K., FRANCE AND THE FEDERAL REPUBLIC WHILE SUPPORTING
INTERNATIONAL ACTION ON ILLICIT PAYMENTS HAVE HAD SERIOUS

RESERVATIONS ABOUT THE SUBSTANCE OF U.S. PROPOSALS FOR CRIMINALIZATION OF BRIBERY AND THE DISCLOSURE OF AGENTS' FEES AND DID NOT SUPPORT THE U.S. EFFORT LAST JULY TO PERSUADE ECOSOC TO SCHEDULE A DIPLOMATIC CONFERENCE.

2. AT THE LAST SESSION OF THE ECOSOC WORKING GROUP MARCH 6-10, FRANCE MADE A DRAMATIC CHANGE IN POSITION BY FORMALLY PROPOSING A TREATY THAT WOULD REQUIRE CONTRACTING STATES TO PUNISH BRIBERY OF AND BY PUBLIC OFFICIALS IN CONNECTION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS WHEN THE OFFENSE IS COMMITTED IN THE CONTRACTING STATE'S TERRITORY OR BY ONE OF ITS NATIONALS. THE PROPOSAL ALSO PROVIDES FOR EXTRADITION AND JUDICIAL ASSISTANCE. ALTHOUGH THE FRENCH PROPOSAL DOES NOT INCLUDE ALL OF THE MEASURES DESIRED BY THE U.S., AND WE HAVE DIFFICULTY WITH SOME OF ITS LANGUAGE, WE REGARD THE FRENCH INITIATIVE AS A POSITIVE DEVELOPMENT THAT COULD HELP BREAK THE IMPASSE ON THIS MATTER IF SUPPORTED BY OTHER INDUSTRIAL COUNTRIES (REF A). THERE IS SOME REASON FOR CONCERN THAT THE U.K. AND FRG MAY NOT SUPPORT THE FRENCH INITIATIVE; THAT FRANCE WILL NOT SHOW ANY FLEXIBILITY AS TO THE TERMS OF ITS DRAFT WHICH WOULD RAISE A QUESTION AS TO FRENCH MOTIVES IN INTRODUCING DRAFT, AND THAT ALL THREE COUNTRIES MAY RESIST ANY ADDITIONAL COMMITMENTS OF INTEREST TO THE U.S. THE FRENCH DRAFT WAS NOT CLEARED WITH ANY OTHER OECD COUNTRIES. CONFIDENTIAL

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3. ACTION REQUESTED: AT THIS POINT, WE WANT TO ENCOURAGE SUPPORT FOR AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS INCLUDING THE BASIC ELEMENTS OF THE FRENCH PROPOSAL AND CERTAIN OTHER IDEAS INFORMALLY CIRCULATED BY THE U.S. DELEGATION IN NEW YORK. (TEXT OF OUTLINE OF U.S. IDEAS FOR A TREATY ARE BEING POUCHED TO YOU.) THESE IDEAS INCLUDE MEASURES RECOMMENDED BY THE INTERNATIONAL CHAMBER OF COMMERCE SUCH AS RECORD-KEEPING OF FEES PAID TO AGENTS DEALING WITH PUBLIC BODIES IN CONNECTION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS. WE ALSO SEEK A FRANK ASSESSMENT OF THOSE CHANGES IN FRENCH OR U.S. PROPOSALS THAT HOST GOVERNMENTS BELIEVE NECESSARY. IT WOULD ALSO BE USEFUL TO KNOW HOW AND ON WHAT BASIS EC IS COORDINATING A POSITION ON THESE ISSUES.

4. FOR PARIS: EMBASSY SHOULD CONFIRM TO GOF THAT USG REGARDS ITS INITIATIVE AS A POSITIVE ACTION AND THAT WE EXPECT TO DISCUSS THE FRENCH TEXTS TO BE THE BASIS FOR DISCUSSION OF CRIMINALIZATION IN THE NEXT WORKING GROUP MEETING AS THEY WERE AT THE LAST. WE HOPE, HOWEVER, THAT THE GOF COULD ACCEPT SOME ADJUSTMENTS IN THE

LANGUAGE OF ITS PROPOSAL TO MEET CONCERNS OF U.S. AND OTHERS AS TO THE SCOPE OF THE OFFENSE AND THE PURE NATIONALITY PRINCIPLE. WE ALSO HOPE THE GOF COULD

SUPPORT SOME, IF NOT ALL, OF THE ADDITIONAL U.S. IDEAS INCLUDED IN THE OUTLINE PASSED TO THE FRENCH DELEGATION IN NEW YORK. WE ARE INTERESTED IN ESTABLISHING A COMMON POSITION OF ALL THE INDUSTRIAL COUNTRIES ON THIS AGREEMENT AND ARE PREPARED TO HAVE FURTHER BILATERAL CONSULTATIONS WITH FRANCE IN THIS REGARD. WE WILL BE SENDING DRAFT U.S. TEXTS ON ARTICLES 1 AND 4 OF FRENCH PROPOSAL BY REFTEL FOR GOF REACTION. WE WOULD ALSO HOPE GOF COULD MODIFY ITS PROPOSAL ON EXTRADITION TO CONFORM WITH EXACT TEXT ESTABLISHED BY HAGUE HIJACKING AGREEMENT.
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FINALLY, WE WOULD HOPE GOF COULD ACCEPT TEXTS ON INFORMATION EXCHANGE AND JUDICIAL ASSISTANCE PREPARED BY WORKING GROUP LAST YEAR AND SET FORTH IN E/6006, CHAPTER IV(1) AND (2).

5. FOR LONDON: FYI: HMG APPEARS DISCONCERTED BY FRENCH PROPOSAL WHICH GOES FURTHER THAN TRADE MINISTRY WISHED TO DO. HOWEVER, WE HEAR PERSISTENT REPORTS THAT THE PM IS MUCH MORE SYMPATHETIC TO AN EFFECTIVE AGREEMENT ON THIS SUBJECT THAN PLIATZKY (E.G. REF C). THIS ISSUE MAY BE RAISED DIRECTLY WITH PM DURING HIS PRESENT VISIT TO WASHINGTON. END FYI. WE WOULD LIKE EMBASSY TO TAKE WHATEVER STEPS IT THINKS CAN BE EFFECTIVE TO OBTAIN U.K. SUPPORT FOR AN AGREEMENT INVOLVING MULTILATERAL COMMITMENTS BY STATES TO INHIBIT BRIBERY OF FOREIGN OFFICIALS BY THEIR ENTERPRISES. WE WOULD ALSO LIKE THE EMBASSY TO FOLLOW UP WITH RAY GEDDES AND OTHER LEADERS OF THE U.K. BUSINESS COMMUNITY WHO MAY BE HELPFUL.

6. FOR BONN: FYI: FROM THE OUTSET OF THIS EXERCISE, THE FRG HAS NOT SUPPORTED PROPOSAL FOR AN INTERNATIONAL AGREEMENT TO COMBAT ILLICIT PAYMENTS, AND WE SEE SIGNS OF INCREASING FRG OPPOSITION TO PROGRESS IN THE MATTER. AT THE LAST OECD XCSS MEETING FRAU. STEEG PASSED SECRETARY COOPER AN EXTREMELY NEGATIVE PAPER ON THE ISSUE, AND THE NEW FRG REP IN THE ECOSOC WORKING GROUP REFLECTS THE SAME ATTITUDE. WE ARE CONCERNED THAT THE FRG MAY ADOPT VARIOUS TACTICS IN THE WORKING GROUP TO DELAY PROGRESS. END FYI. YOU SHOULD RAISE THIS ISSUE WITH SENIOR GERMAN OFFICIALS INCLUDING ECONOMIC MINISTER LAMBSDORFF AND FINANCE MINISTER MATTHOREFER WHO ARE REPUTED TO BE SYMPATHETIC ON THE MATTER. YOU SHOULD INDICATE THAT USG HOPES FRG WILL BE ABLE TO
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SUPPORT A TREATY INCLUDING PROVISIONS FOR CRIMINALIZATION
ALONG THE GENERAL LINES OF THE FRENCH PROPOSAL AS WELL

AS OTHER IDEAS CIRCULATED BY THE USG WHICH ARE BASED ON
RECOMMENDATIONS OF THE INTERNATIONAL CHAMBER OF COMMERCE.
THESE RECOMMENDATIONS TO GOVERNMENTS WERE INCLUDED IN THE
REPORT ADOPTED BY THE ICC COUNCIL ON NOVEMBER 29 UNDER
THE LEADERSHIP OF A GERMAN BUSINESSMAN, HERR STOEDTER,
AND WERE SUPPORTED BY THE GERMAN REPRESENTATIVES IN THE
ICC. VANCE

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